

REMARKS

Claims 1-18 are currently pending in the present application, with Claims 1, 7-11, and 14-18 being amended. Reconsideration and reexamination of the claims are respectfully requested.

The Examiner objected to the specification of the present application as failing to provide proper antecedent basis for the claimed subject matter. Applicants first note that the amendments of the previous amendments were made as a result of the Examiner's supervisor's own suggestion made during the telephonic interview conducted on September 17, 2009; it appears that the Examiner is retracting those suggestions that were previously made. Applicants traverse this objection in that the claims are fully supported by the written description of the present application, but have nonetheless amended the claims to clarify the claimed subject matter so as to better match the language of the written description. Specifically:

- a. "hardware interface" in at least Claim 1 has been amended to recite "communication interface". Antecedent basis for this element is clearly found in paragraph [0025] of the printed publication of the present application, and also shown as Fig. 1 ("communication I/F 12").
- b. "step for generating new music content," as recited in Claim 1, is described in paragraph [0027] of the printed publication of the present application.
- c., d. "step for generating additional information" and "step for appending the generated additional information" as recited in at least Claim 1, is described in paragraphs [0027] to [0030] of the printed publication of the present application, in which the specification described generating new musical content on the basis of the replication

of the original content, and that management data, including “additional information,” is generated and appended to the replicated new music content.

- e. “step for searching” in at least Claim 8 is clearly shown as step S16 in Fig. 4. Accompanying description can be found in paragraphs [0046] and [0049] of the printed publication of the present application.
- f. “step for permitting” in at least Claim 8 is clearly shown as steps S17, S18, and S19 as shown in Fig.4. Accompanying description can be found in paragraph [0037] of the printed publication of the present application.
- g. “step for encrypting” in at least Claim 9 is clearly shown as step S6 in Fig. 3, with the accompany description found in paragraph [0032] of the printed publication of the present application.
- h. “step for acquiring” in at least Claim 18 is clearly shown as step S11 in Fig. 4, with the accompany description found in paragraph [0035] of the printed publication of the present invention.

Applicants note that the language of the claims does not need to literally match the language of the specification. What is at issue is whether the claimed subject matter finds support in the written description of the specification. And, as shown above, each of the item for which the Examiner observed as lacking support is fully supported by the written description. Accordingly, no amendments to the specification are necessary.

Rejection under 35 U.S.C. 112

The Examiner rejected Claims 1-18 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed with respect to the amended claims.

Applicants first note that the previously submitted amendments were made in accordance with suggestions made by the Examiner's supervisor during the telephonic interview conducted on September 17, 2009.

Applicants disagree with the Examiner in that the claims do not invoke 35 U.S.C. 112, sixth paragraph. Specifically, the "step plus function" elements that the Examiner identified in the various claims are in fact method steps performed by a programmed processor, or set of executable instructions contained in a computer-readable medium. These claims are apparatus claims that do not invoke 35 U.S.C. 112, sixth paragraph. For instance, in Claim 1, the "replicated content generation step" is a step performed by the programmed processor, which is the structure being claimed. There is no otherwise corresponding structure that need to be identified since a specific structure has been claimed. The undersigned attorney respectfully remind the Examiner that this very issued was specifically and exhaustively discussed with the Examiner during the September 17, 2009 interview, and resulted in the amendments that was suggested by the Examiner's supervisor and hence adopted by the Applicants. Nonetheless, Applicants have further amended the claims to further clarify the claimed subject matter away from the invocation of 35 U.S.C. 112, sixth paragraph.

Applicants thank the Examiner for noticing the inadvertent errors of Claims 7 and 14 with respect to the recitation of "section." Applicants have amended the claims to correct the errors.

Rejection under 35 U.S.C. 103(a)

The Examiner rejected Claims 6 and 14 under 35 U.S.C. 103(a) as being unpatentable over Miller (U.S. Patent Pub. No. 2003/0018777 A1) in view of Farber (U.S. Patent Pub. No. 2002/0052884). This rejection is respectfully traversed.

As previously communicated, the present invention is generally directed to an apparatus or program-encoded medium for facilitating the replication of musical content that is otherwise protected from unauthorized duplication. According to a preferred embodiment of the present invention, original music content is acquired from an original source, after which duplicate copies is replicated. During replication of the original musical content, additional information is generated and appended to the replicated musical content. In addition to indicating that the replicated musical content is a duplicate copy, the additional information also indicates the source from which the duplicated copy is replicated.

As discussed during the September 17, 2009 telephonic interview, and agreed upon by the Examiner, Farber is generally directed to data processing systems in which unique identifiers are used to identify data items. Farber does not contain any disclosure or suggestion of an “additional information generation section” that generates “additional information” as recited in the claim. Furthermore, Applicants disagree with the Examiner’s characterization of Farber as disclosing the limitations recited in Claims 6 and 14 in that Farber does not disclose or suggest acquiring substance data from an original music content *if* it is determined that the acquired music content is permitted *and if* the at least some of substance data of the original music content are not included in the substance data.

Furthermore, Applicants also disagree with the Examiner's application of Miller to the base claims of Claims 6 and 14 in that Miller simply has nothing do to with preventing unauthorized copying of musical content. Rather, Miller is simply directed to packet transfer protocol. It is unclear how the Examiner could, for instance, read Step 18 in Fig. 8 of Miller as reading on the an interface for acquiring original musical content.

Applicants further traverse the Examiner's combination of Miller and Faber in that it is unclear how, technically or theoretically, the teachings of the two references can be combined.

For these reasons, Applicants submit that Claims 6 and 14 are not obvious under 35 U.S.C. 103(a) in view of Miller and Faber, even if combined.

Finally, Applicants note that the Examiner, at page 20 of the Detailed Action, appears to reference a separate prior art rejection of Claims 4 and 13. However, **Applicants can find no other prior art rejections made by the Examiner other than the rejection of Claims 6 and 14.**

Although the Examiner appears to discuss the application of Miller with respect to certain claims (pp. 13-20 of the Detailed Action), the Examiner made no official rejection under 35 U.S.C. 102 or 103, other than the rejection against Claims 6 and 14 under 35 U.S.C. 103(a) on page 20 of the Detailed Action. It is unclear to which reference was the Examiner citing in the discussions in pp. 13-20 (Applicants note that, for instance, on p. 13 of the Detailed Action, was the Examiner referring to Fig. 8 of Miller or another reference?). Even if the Examiner had identified the reference sufficiently for the Applicants to understand the application of the prior art, Applicants again note that no rejection was actually made. To the extent the Examiner wishes to add rejections via a separate office action, Applicants remind the Examiner that such an office action should not be made final.

In view of the above, Applicants submit that all of the pending claims are patentable over the cited prior art references.

Furthermore, Applicants respectfully submit that the amendments of this instant communication be entered even though submitted after an final office action, as the amendments of this instant communication raises no new issues. Furthermore, Applicants note that the amendments of the previously filed amendment were made per the Examiner's own suggestion, and hence should not as a matter of equity "necessitate" a final office action given now the Examiner's position appeared to have altered from what the Applicants had understood to be acceptable by the Examiner during the September 17, 2009 interview.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that an additional telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 393032045000. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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